

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SCOTT ANDREW THOMAS,

8:07CV401

Plaintiff,

v.

**MEMORANDUM
AND ORDER**

EUGENE OLIVELTO, et al.,

Defendants.

This matter is before the court on its own motion. On March 7, 2008, the court entered a Memorandum and Order allowing Plaintiff to amend his Complaint in order to clearly state a claim upon which relief may be granted against Defendants. (Filing No. [9](#).) In particular, Plaintiff was given leave to properly allege a claim against Douglas County “or any other Defendant.” (*Id.* at CM/ECF p. 5.)

Plaintiff filed an Amended Complaint on May 22, 2008. (Filing No. [12](#).) After reviewing the Amended Complaint, the court finds that Plaintiff has complied with its March 7, 2008 Memorandum and Order with respect to his claims against the individuals Defendants. Service on those Defendants is now warranted. However, for the reasons set forth in the court’s March 7, 2008 Memorandum and Order, Plaintiff has failed to state a claim upon which relief may be granted as to his claims against Douglas County Department of Corrections Medical Department. These claims are therefore dismissed without prejudice.

IT IS THEREFORE ORDERED that:

1. To obtain service of process on the remaining Defendants, Plaintiff must complete and return the summons form which the Clerk of the court will provide. The Clerk of the court shall send THREE (3) summons forms and THREE (3) USM-

285 forms to Plaintiff together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the court. In the absence of the forms, service of process cannot occur.

2. Upon receipt of the completed forms, the Clerk of the court will sign the summons forms, to be forwarded with a copy of the Amended Complaint to the U.S. Marshal for service of process. The Marshal shall serve the summons and Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal. The Clerk of the court will copy the Amended Complaint, and Plaintiff does not need to do so.

3. Fed. R. Civ. Pro. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. However, because in this order Plaintiff is informed for the first time of these requirements, Plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process.

4. Plaintiff is hereby notified that failure to obtain service of process on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to such defendant. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

5. The Clerk of Court is directed to set a pro se case management deadline in this case with the following text: "August 12, 2009: Check for completion of service of summons."

6. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. Plaintiff shall keep the court informed of her current address at all times while this case is pending. Failure to do so may result in dismissal.

7. Plaintiff's claims against Defendant Douglas County Department of Corrections Medical Department are dismissed without prejudice.

April 16, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge